Testimony of

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Good morning Mr. Chairman. I am here today to discuss the antitrust issues related to mergers and acquisitions in the airline industry.

I must caution that three major airline mergers or acquisitions are now pending decision before the Department. Under those circumstances, I know you will agree that my comments must be confined to issues of general policy and precedent, in order to protect the rights of all parties in those cases.

Section 408 of the Federal Aviation Act governs airline mergers and acquisitions. Under that section, a proposed merger or acquisition must be approved if the evidence shows that it will not result in a monopoly or substantially lessen competition, and if it is consistent with the public interest. Even where the effect of a transaction would be to substantially lessen

competition, the transaction may still be approved if (1) the anticompetitive effects are outweighed by the benefits which the transaction would provide in meeting significant transportation conveniences and needs of the public, and (2) such benefits cannot be achieved by less anticompetitive alternatives.

Congress established this standard with the Airline Deregulation Act of 1978. At the same time, Congress decided that the air transport industry should be regulated by the competitive forces of the marketplace, and that governmental regulation should gradually be phased out. The phase out included the sunset of the CAB and the transfer to the Department of Justice of the responsibility for reviewing airline mergers under section 408. However, in the Civil Aeronautics Board Sunset Act of 1984, Congress decided that the merger authority should be vested in the Department of Transportation, and accordingly transferred the section 408 function to the Department of Transportation until the end of 1988, when special governmental regulatory review of airline transactions is scheduled to end. Congress has directed that the Department prepare a report on this scheduled termination prior to its effective date.

Since Congress entrusted us with the responsibility for reviewing airline mergers, we have diligently carried out that responsibility and will continue to do so. We review each merger or acquisition proposal under the standards set by Congress in the Airline Deregulation Act. In applying section 408, the

Department, like the Civil Aeronautics Board, has used the standards and precedents developed under section 7 of the Clayton Act to assess the competitive impact of airline mergers. That is not to say that the CAB and the Department have rigidly applied formulae developed in the context of other industries. Rather, we have heeded the admonition of the Supreme Court and examined the "specifics of competition" in the markets affected by a merger to decide whether it is likely to lessen competition.

Since Sunset, the Department has decided seven significant cases under section 408: the Pacific Division Transfer Case, Southwest-Muse, Midway-Air Florida, People Express-Frontier, People Express-Britt, Piedmont-Empire, and Horizon-Cascade. In deciding these cases, we applied the statutory requirements established by section 408 of the Act and the standards and precedents developed thereunder.

For example, in the Pacific Division case, we found that United's acquisition of Pan American's international Pacific operations would not reduce competition, because the transaction would create a strong U.S. competitor in the rapidly growing Pacific markets in place of two carriers whose ability to compete was limited and would likely decline further (United because of restrictions imposed by our aviation agreement with the Japanese government, and Pan American because of its longstanding financial difficulties). In addition, the Pacific markets are already served by a significant number of competitors, and viable price

competition does take place. Moreover, United was likely to confront a more competitive marketplace after the transaction was consummated, as the recent modification of our aviation agreement with Japan will enable more competitors to enter the Pacific markets. The other six cases involved domestic markets, where entry is relatively easier and where our review of the transactions revealed that the merged carriers would, therefore, not lack competition.

The basis for Congress' 1978 determination regarding deregulation was the common perception that the airline industry was fundamentally competitive. Our experience to date has confirmed that view. We believe that in a competitive industry the best determinant of the optimal "industry structure" is the marketplace, not the government. Those carriers that can meet the demands of passengers and shippers should do well, and those that cannot, will not.

This does not mean that there is no role for government oversight. The antitrust laws must be enforced just as vigorously in this industry as they are in others, since market forces cannot operate if competitors can collude or if some carriers have the power to block others from competing. The antitrust laws, however, do not presume that all mergers are bad. Instead, the antitrust laws require us to analyze each merger -- or practice -- on its own merits. We have undertaken such an examination in each of the cases decided by us, and we intend to thoroughly examine the

competitive issues in the three cases now pending before us. Indeed, because we intend to conduct a thorough examination of the issues in those cases, we have instituted oral evidentiary hearings in all three. If a particular transaction will lead to a "substantial lessening of competition" in some markets, we will disapprove the transaction, unless the parties can modify it so that it will not threaten competition.

This concludes my prepared statement. I would be pleased to respond to any questions you may have.